

**DEPARTMENT OF HUMAN SERVICES**  
**DIVISION OF DEVELOPMENTAL DISABILITIES**  
**INTER-OFFICE COMMUNICATION**

**DATE:** October 6, 2000  
**TO:** Distribution List  
**FROM:** Deborah Trub Wehrlen  
Director  
**SUBJECT: Division Circular #42 "Donated Housing"**

Attached is a revision of the above circular which replaces DC #42 "Donated Housing" issued August 1, 1991. The latter should be removed from your manual.

The revised circular reflects several changes and clarifications. It was carefully reviewed by a Deputy Attorney General assigned to the Division.

If you have any questions, please call James M. Evanochko, Administrative Practice Officer, at (609) 633-2209.

DTW:zs  
Attachment

**DIVISION CIRCULAR #42  
(N/A)**

**DEPARTMENT OF HUMAN SERVICES**

**DIVISION OF DEVELOPMENTAL DISABILITIES**

**EFFECTIVE DATE:** October 1, 2000

**DATE ISSUED:** October 6, 2000

(Rescinded DC42, Donated Housing, issued August 1, 1991)

**I. TITLE: DONATED HOUSING**

**II. PURPOSE:** To establish policy to allow a family or other interested individual(s) to donate a house in return for services for an eligible individual from the urgent waiting list.

**III. SCOPE:** This circular applies to all components of the Division as well as provider agencies under contract with or regulated by the Division.

**IV. POLICIES:**

- Housing may be donated for an individual who is on the Division's urgent residential waiting list for community placement.
- The individual may or may not reside in the house that is donated. Due consideration shall be given to allow the individual continued use of the residence if desired and appropriate. Placement shall be made in accordance with the person's Individual Habilitation Plan (IHP).
- The housing may be donated to a service provider under contract with or regulated by the Division who agree to provide services to the individual in accordance with Appendix A.
- It shall be the prerogative of the Division to determine the suitability of the residence to be donated.
- The provision of services shall be subject to the availability of funding in a given fiscal year.

- The residence shall qualify, with renovation, for a license as a community residence for the developmentally disabled under N.J.A.C. 10:44A.
- Individuals, other than the individual on whose behalf the house was donated, who may occupy the house, will be determined by the Division.

**V. GENERAL STANDARDS:**

- A. **Definitions** - The following terms shall have the meanings defined herein:
1. "Conditional Grantor" means the party donating the residence.
  2. "Conditional Grantee" means the agency that agrees to provide services to the individual donating the home.
  3. "Individual Habilitation Plan (IHP)" refers to Division Circular #35.
- B. The IHP shall identify that the individual requires placement in a community based living arrangement.
- C. The Division shall determine the suitability of a residence on a case by case basis, including, but not limited to, such factors as:
1. Clear Title;
  2. Size;
  3. Location;
  4. Condition; and
  5. Access to public transportation.
- D. Once the initial 24 month period (as referenced in Appendix A) has expired and the title is transferred, the individual shall continue to receive services in accordance with his or her IHP as long as services are required.
- E. Prior to the expiration of the 24 month period from the date of the Agreement (refer to Appendix A), the Division, provider and/or conditional grantor has the ability to void the agreement according to the conditions listed below.

- F. The cost of any renovations required to allow the home to be licensed under N.J.A.C. 10:44A shall not be borne by the Division. If there are programmatic renovations that are required for one or more of those living in the home other than the individual on whose behalf the home is donated, those costs may be borne by the Division.

## **VI. PROCEDURE**

- A. A conditional grantor who wishes to donate the housing shall be referred to the Regional Assistant Director (RAD).
- B. The RAD shall contact the regional office to determine if the individual in question is on the urgent waiting list.
- C. The RAD shall request an evaluation of the property by Division staff to determine if it can meet the licensing requirements and what renovations will be required. for use as a community residence.
- D. When the requirements of B and C above have been met, the RAD shall ask the individual or his or her family to identify a provider agency that is willing to provide the services.
- E. Once the housing has been determined suitable, the RAD may grant approval of a program for the use of the house from a provider agency. The approval of the program shall be contingent upon a successful application for a license to operate a community residence for the developmentally disabled.
- F. When the home is licensed, the Division may enter into an agreement with the conditional grantor and the service provider. A copy of the agreement is included in Appendix A.
- G. The individual shall be placed in a community-based living arrangement within 90 days of the signed agreement. The community-based living arrangement need not be the housing donated.
- H. The Division shall void the contract within 24 months if:
  - 1. The individual is determined in the IHP not to require residential placement; or
  - 2. The individual dies; or

3. The Division determines that it will no longer contract with the service provider.
- I. The provider shall void the contract within 24 months if:
  1. The provider agency no longer contracts with the Division for the provision of services; or
  2. The provider agency determines that it shall not serve the individual.
- J. If the service provider voids the contract, the Division may seek an alternate service provider.
- K. The conditional grantor may void the agreement only if the services designated in the IHP are not provided to the individual within the 24 months after the agreement is signed.
- L. If the agreement is voided, the individual(s) shall be relocated as soon as possible after the agreement has been voided.
- M. The house shall be returned to the conditional grantor as soon as all the individuals are relocated and no longer than one year after the agreement has been voided.
- N. Once the 24 months have expired and the property has been transferred to the provider agency, the agency shall have the unrestricted right to the property except as limited by its contract with the Division.

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Deborah Trub Wehrle  
Director

## APPENDIX A

**AGREEMENT** made this     day of     , 19     , by and between  
 \_\_\_\_\_, residing at \_\_\_\_\_,  
 hereinafter called "Conditional Grantor" (Service Provider's  
 Name) \_\_\_\_\_, a non-profit corporation of the State of New Jersey,  
 hereinafter called "Conditional Grantee" and sometimes called "Service  
 Provider", and DIVISION OF DEVELOPMENTAL DISABILITIES of the  
 Department of Human Services of the State of New Jersey, hereinafter called  
 "State Agency."

### WITNESSETH:

**WHEREAS**, State Agency administers a program for the assistance of  
 persons with developmental disabilities, pursuant to statute and regulations duly  
 enacted; and

**WHEREAS**, Conditional Grantor desires to convey a certain parcel of real  
 estate, hereinafter described in Schedule "A" attached hereto, and referred to as  
 "the property", which the Conditional Grantee, as service provider, believes will  
 be suitable for housing a number of recipients of such State assistance and  
 consonant with the objectives of the Conditional Grantee, subject to approval by  
 State Agency of the property as a community-based living arrangement; and

**WHEREAS**, Conditional Grantor is related to and/or profoundly concerned  
 about the welfare and future care and assistance to  
 \_\_\_\_\_, a person believed to be classifiable as an  
 "eligible developmentally disabled person" under N.J.S.A. 30:6D-26 (hereinafter  
 called "the Act") and qualified to receive assistance, hereinafter called  
 "designated disabled person"; and

**WHEREAS**, Conditional Grantor wishes to condition the proposed  
 conveyance of the property on the qualification that if the designated disabled  
 person does not receive "State Assistance", as hereinafter defined, starting within  
 24 months from the date of the agreement, the title to the property, at the option  
 of the Conditional Grantor, will revert back to Conditional Grantor and a condition  
 subsequent to this effect will be included as an express term in said deed; and

**WHEREAS**, the parties hereto believe that this transaction is in their  
 respective best interests and consistent with and in furtherance of the legislative  
 policy of the State of New Jersey, to encourage the placement of  
 developmentally disabled persons into community-based living arrangement as  
 an alternative to institutional placement;

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND UNDERSTANDING CONTAINED HEREIN, IT IS HEREBY AGREED, AS FOLLOWS:**

**1. ROLE OF STATE AGENCY**

The State Agency agrees to give favorable consideration for state assistance to the designated disabled person in question. The State Agency acknowledges that such preferential treatment is warranted by reason of the donation of such property by the conditional grantor, which has resulted in the availability of housing to be used as a community-based living arrangement for more than one (1) eligible developmentally disabled person to reside in under the sponsorship of the State Agency.

It shall be a prerequisite for the parties to enter into this agreement for the State Agency to have made the following findings:

- (a) That this property in question is suitable as a community residence or community care residence that will house more than one (1) eligible developmentally disabled person;
- (b) That the Service Provider has submitted a program proposal accepted by the State Agency and designated disabled person and/or his/her guardian ("the program");
- (c) That an Individual Habilitation Plan ("IHP") has been prepared and signed by the parties hereto.

**2. DEFINITION OF "STATE ASSISTANCE"**

Wherever used in this Agreement, "State Assistance" shall mean the implementation of the program contained in the Individual Habilitation Plan for the designated disabled person and the placement of such developmentally disabled person in a community-based living arrangement, but not necessarily one located on the property donated, within ninety (90) days from the date of this Agreement, and continuance of residence by the developmentally disabled person in a State sponsored community residential facility, but not necessary the same one, for a period of at least twenty-one (21) months thereafter. The death or failure of the person with a developmental disability to receive such described services, shall result in an option in the Conditional Grantor to void the agreement. Once the initial 24 month period has expired and the title is transferred, the individual shall continue to receive services in accordance with his/her IHP as long as services are required.

## **2. ROLE OF CONDITIONAL GRANTEE**

The Conditional Grantee is the service provider and will provide the staff necessary and qualified to manage the community-based living arrangement or community care residence contemplated herein and in accordance with the separate contract entered into with the State Agency. The Conditional Grantee agrees to accept a Bargain and Sale Deed with Covenant against Grantor conveying title to the property, as described in Paragraph 4, together with an acceptable affidavit of title subject to the conditions outlined above and to maintain the property as a community-based living arrangement in accordance with the standards developed by the State Agency and subject to the State Agency monitoring the facility and program in order to insure that the individuals being served are receiving quality care and a safe environment. As service provider, the Conditional Grantee shall administer the financial assistance given by the State in accordance with the established budget and guidelines.

## **4. OBLIGATION OF CONDITIONAL GRANTOR**

Conditional Grantor hereby agrees that in consideration of the designated disabled person receiving State Assistance, as above defined, it will convey, free of all liens, restrictions and encumbrances the property, the title to which shall be insurable at regular rates by a reputable title insurance company licensed to do business in the State of New Jersey. Such conveyance shall be by Bargain & Sale Deed with Covenant against Grantor's Acts and subject to a reverter provision giving conditional grantor an option to cause the reversion of title back to it in the event the designated disabled person does not receive State Assistance as hereinabove defined. The conditional gift in question is intended to be a charitable contribution but the parties hereto make no representations as to same as the nature of this gift for tax deductible purposes is subject to Internal Revenue Service regulations and interpretations. The aforesaid deed shall be delivered by Conditional Grantor to Conditional Grantee but, in any event, no later than thirty (30) days from the date of this agreement. Conditional Grantee shall promptly record such Deed with the County Clerk of the appropriate county and shall furnish Conditional Grantor with a "true copy" of same after recording.

## **5. RESTRICTIONS ON CONDITIONAL GRANTEE**

As a non-profit corporation, Conditional Grantee hereby reaffirms that the property will be used only to further its stated objectives.

(repeat agency objectives here)



During the period of two (2) years from the date of this deed, Conditional Grantee agrees not to encumber, sell or allow any liens to be placed on the property and further agrees to maintain said property in a reasonable safe and presentable condition. Conditional Grantee agrees not to grant any rights, easements or other changes on the property during this two (2) year period and shall maintain the title to same in the same state as it was when the conveyance herein was made. Thereafter, Conditional Grantee shall have the unrestricted right to sell or exchange the property within the scope of its stated objectives and except as limited by its contract with the Division.

#### **6. SURVIVAL OF TERMS**

All of the terms of this agreement shall survive delivery of the Deed for a period of two (2) years from the date of delivery of said Deed.

#### **7. NO ASSIGNMENT**

The parties hereto agree that this agreement and the rights and duties created hereunder are non-assignable and non-delegable.

#### **8. BINDING EFFECT**

This agreement shall be binding upon and inure to the benefit of the parties hereto, their legal representatives, heirs and successors.

#### **9. MODIFICATION**

This agreement may not be orally changed or modified and no modification shall be binding unless in writing and signed by all of the parties hereto.

#### **10. GOVERNING LAW**

This agreement shall be governed by and interpreted in accordance with the laws of the State of New Jersey.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first above written.

\_\_\_\_\_  
**Conditional Grantor**

\_\_\_\_\_  
**Conditional Grantee**

**DIVISION OF DEVELOPMENTAL DISABILITIES**

**By:**\_\_\_\_\_